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## APPENDIX

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# Supreme Court of the United States

OCTOBER TERM, 1968

No. 63

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THE STATE OF OHIO, EX REL. NELLIE HUNTER,  
ON BEHALF OF THE CITY OF AKRON,

*Appellant,*

v.

EDWARD O. ERICKSON, MAYOR OF THE  
CITY OF AKRON, *et al.*,

*Appellees.*

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ON APPEAL FROM THE SUPREME COURT OF OHIO.

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APPEAL WAS DOCKETED ON APRIL 24, 1968.  
PROBABLE JURISDICTION NOTED JUNE 3, 1968.

# SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 63

THE STATE OF OHIO, ex rel. NELLIE HUNTER,  
on Behalf of the City of Akron,

Appellant,

against

EDWARD O. ERICKSON, Mayor of the City of Akron, et al.,  
Appellees.

ON APPEAL FROM THE SUPREME COURT OF OHIO

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# **Court of Appeals**

**Ninth Judicial District**

**No. 5601**

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**THE STATE OF OHIO, EX REL NELLIE HUNTER, ON BEHALF OF  
THE CITY OF AKRON, 1433 Orlando Avenue, Akron, Ohio,**  
*Plaintiff-Relator*

**VS.**

**EDWARD O. ERICKSON, MAYOR OF THE CITY OF AKRON, Akron  
Municipal Building, Akron, Ohio.**

**RAY C. SHEPPARD, CITY DIRECTOR OF LAW, Akron Municipal  
Building, Akron, Ohio,**  
**and**

**KENNETH KOLLER, c/o Ken Koller Real Estate Co., Ohio  
Building, Akron, Ohio,**

**WILLIAM S. PARRY, 925 S. Main Street, Akron, Ohio,**

**MARTHA BIRNBAUM, 584 Woodside Drive, Akron, Ohio,**

**ROBERT C. WILSON, 47 N. Main Street, Akron Ohio,**

**CLIFFORD E. GATES, 250 E. Market Street, Akron, Ohio. Con-  
stituting the Members of the Commission on Equal Op-  
portunity in Housing,**

*Defendants-Respondents.*

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## **PETITION**

**(Filed: Court of Appeals, Summit Co., Ohio,  
Feb. 3, 1965.)**

1. Relator, Nellie Hunter, states that she is a citizen and taxpayer of the City of Akron, Ohio. She brings this action on behalf of the said municipality, on behalf of herself and all others similarly situated.

*Petition*

2. Respondent, Edward O. Erickson, at all times mentioned herein was and still is the Mayor of the City of Akron, Ohio, an incorporated municipality.

3. Respondent, Ray C. Sheppard, is presently the City Director of Law for Akron, Ohio.

4. On July 14, 1964, the City Council of Akron, Ohio passed Ordinance Number 873-1964, which was approved by the Mayor, July 18, 1964, and became effective on that date. A certified copy of that Ordinance is attached hereto as Exhibit A.

5. On July 21, 1964, Section 6 of the Ordinance was amended by Ordinance Number 926-1964, which was approved by the Mayor, July 22, 1964, and became effective on that date. A certified copy of that Ordinance is attached hereto as Exhibit B.

6. Respondents, Kenneth Koller, William S. Parry, Martha Birnbaum, Robert C. Wilson, and Clifford E. Gates, constitute the Commission on Equal Opportunity in Housing (hereafter referred to as "Commission") appointed by the Mayor as required by Section 2 of Ordinance 873-1964.

7. Relator states that as a citizen of Akron, Ohio she is one of the persons whom the amended Ordinance was enacted to protect against unfair housing practices caused by discrimination on the basis of race, color, religion, national origin, or ancestry, and that she has a legally enforceable right to have the amended Ordinance enforced.

8. Relator states that on the 26th and 27th of January 1965, the Mayor and members of the Commission were served with a copy of an affidavit, alleging, among other

## *Petition*

the amended Ordinance was, and still is, in full force and effect.

15. Relator states that she has no adequate remedy at law, which will enforce performance by the respondents.

WHEREFORE, plaintiff-relator prays for a Writ of Mandamus: (1) Directing the respondent, Edward O. Erickson, as Mayor of the City of Akron, Ohio, to convene the Commission, for the purpose of processing relator's complaint and the complaint of all others similarly situated; (2) Directing Edward O. Erickson to require that the Commission do all other things necessary to carry out their duties under amended Ordinance 873-1964; (3) Directing each and all of the Commissioners to officially receive and investigate relator's complaint and the complaint of all others similarly situated, and then to do all other things required by the amended Ordinance, if in their discretion probable cause exists for relator's complaint; (4) Directing the City Director of Law to take such action as prescribed in the amended Ordinance for the enforcement of the orders of the Commission, if said Commission shall deem it necessary to certify to him the record of its proceeding, of relator's complaint; or (5) Show cause before this Court, at a time to be fixed, why they should not do so. Relator prays that this Court find she had good cause to believe her allegations well-founded and to allow her her costs, and, if the Writ be granted, to allow as part of her costs a reasonable compensation for her attorney.

*NORMAN PURNELL,  
Attorney for Plaintiff-Relator.*

(Verification)

## Exhibit A, Annexed to Petition

(ORDINANCE No. 873-1964)

ORDINANCE No. 873-1964 declaring a public policy of equality of opportunity in housing, creating and establishing a commission in the Office of the Mayor, which commission shall be called the "Commission on Equal Opportunity In Housing"; prescribing the duties of said Commission on Equal Opportunity in Housing; prohibiting certain acts as unfair housing practices; and declaring an emergency.

WHEREAS, The population of The City of Akron consists of people of different race, color, religion, ancestry or national origin, many of who live in circumscribed and segregated areas, under sub-standard, unhealthful, unsafe, unsanitary and overcrowded conditions, because of discrimination in the sale, lease, rental and financing of housing; and

WHEREAS, These conditions have caused increased mortality, disease, crime, vice and juvenile delinquency, fires and risk of fire, intergroup tensions and other evils, thereby resulting in great injury to the public safety, public health and general welfare of The City of Akron and reducing its productive capacity; and

WHEREAS, The harmful effects produced by discrimination in housing also increase the cost of government and reduce the public revenues, thus imposing financial burdens upon the public for the relief and amelioration of the conditions so created; and

WHEREAS, Discrimination in housing results in other forms of discrimination and segregation which are prohibited by the Constitution of the United States of America, and are against the laws and policy of the State of Ohio and The City of Akron; and

*Exhibit A*

**WHEREAS**, Discrimination in housing adversely affects the continued redevelopment, renewal, growth and progress of The City of Akron;

**NOW THEREFORE, BE IT ENACTED** by the Council of The City of Akron:

**SECTION 1. /DECLARATION OF POLICY.**

It is hereby declared to be the policy of The City of Akron, in the exercise of its police power for the protection of the public safety, public health and general welfare, for the maintenance of business and good government and for the promotion of the City's trade, commerce and manufacturers, to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, ancestry or national origin, and to that end to prohibit discrimination in housing by any person or institution.

**SECTION 2.** To effectuate said policy there is hereby created in the Office of the Mayor a Commission on Equal Opportunity in Housing, which shall consist of five members who shall be appointed by the Mayor for a term of five years each; provided, however, that when the first Commission on Equal Opportunity in Housing shall be appointed under the provisions herein, the members thereof shall be appointed for one, two, three four, and five years, respectively.

**SECTION 3. DEFINITIONS.**

As used in this ordinance, unless a different meaning clearly appears from the context, the following term shall have the meanings ascribed in this section:

(a) "Person" means any individual, partnership, association, organization, corporation, legal representative,

**Exhibit A**

trustee, receiver, any owner, lessee, proprietor, manager, agent, or employee; any real-estate broker, salesman, managing agent, or other person having the right to sell, rent, lease, sub-lease, assign, transfer, or otherwise dispose of a housing accommodation, or having the right to negotiate a sale, rental, lease, sublease, assignment, transfer, or other disposition of a housing accommodation; the state, any of its political subdivisions, or any authority, agency, board, or commission thereof; lending institution regularly engaged in the business of lending money or guaranteeing loans; and other organized groups of persons;

(b) "Housing" means any buildings, structure, or part thereof which is used or occupied, or is intended, arranged, or designed to be used or occupied as the permanent or temporary home or residence of one or more human beings; or any vacant land for sale or lease for housing; provided that housing does not include rental accommodations in owner-occupied dwellings in which the owner, at the time of rental, maintains one of the accommodations as his family residence.

(c) "Unlawful housing practice" means any act prohibited by Section 4 of this Ordinance.

(d) "Discrimination" means any difference in treatment, including segregation, directly or indirectly, because of race, color, religion, national origin, or ancestry.

(e) "Restrictive covenant" means any specification limiting the transfer, rental, lease, or other use of any housing because of race, color, religion, national origin, or ancestry, or any limitation based upon affiliation with or approval by any person, directly or indirectly, employing race, color, religion, national origin, or ancestry as a condition of affiliation or approval.

*Exhibit A*

(f) *Commission.* The term "Commission" means the Commission on Equal Opportunity in Housing established in the Office of the Mayor pursuant to this Ordinance.

**SECTION 4. PROHIBITIONS.**

It shall be an unlawful housing practice:

(a) For any person because of race, color, religion, or national origin, or ancestry to:

(1) Refuse to sell, rent, lease, sublease, assign, transfer, or otherwise deny or withhold any housing to any person, or to refuse to negotiate for any such purpose;

(2) Represent to any person that housing is not available for inspection when in fact it is so available;

(3) Discriminate against any person in the terms, conditions, or privileges of the sale, rental, sublease, assignment, or transfer of any housing or in the furnishing of facilities or services in connection therewith.

(b) For any person to whom application is made for financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of any housing to:

(1) Make written or oral inquiry as to the race, color, religion, national origin, or ancestry of the person or persons seeking such financial assistance or of prospective occupants or tenants of the affected housing;

(2) Discriminate against any person or persons because of race, color, religion, national origin, or ancestry in the terms, conditions, or privileges relating to the obtaining or use of such financial assistance.

*Exhibit A*

(c) For any person to include in any transfer, rental, or lease of housing any restrictive covenants; or for any person to honor or exercise, or attempt to honor or exercise any restrictive covenant pertaining to housing;

(d) For any person to print or publish, or cause to be printed or published, any notice or advertisement relating to the transfer, rental, or lease of any housing which indicates any preference, limitation, or specification based on race, color, religion, national origin, or ancestry;

(e) For any person to aid, abet, incite, compel, or coerce the doing of any act defined in this section as an unlawful housing practice, or to obstruct or prevent any person from complying with this section or any order issued under this section or to attempt, directly or indirectly, to commit any act defined in this section to be an unfair housing practice;

(f) For any person to induce or solicit a housing listing or transaction by misrepresentations regarding the present or prospective composition of a neighborhood, or the effect of such composition of the neighborhood, where such misrepresentations include a reference to the race, color, religion, national origin, or ancestry of any other person:

**SECTION 5. DUTIES OF THE COMMISSION ON EQUAL OPPORTUNITY IN HOUSING.**

It shall be the duty of the Commission to:

(a) Initiate or receive and investigate complaints charging unlawful housing practices;

(b) Seek conciliation of such complaints, hold hearings, make findings of fact, issue orders and publish its findings of fact and orders in accordance with the provisions

*Exhibit A*

of this ordinance and with the ordinance establishing the Commission;

(c) Render from time to time, but not less than once a year, a written report of its activities and recommendations with respect to fair housing practices to the Mayor and to the City Council; and

(d) Adopt such rules and regulations as may be necessary to carry out the purposes and provisions of this ordinance.

**SECTION 6. Enforcement Procedure.**

(a) A complaint charging a violation of this ordinance may be made by the Commission itself or by an aggrieved individual.

(b) The Commission shall make a prompt and full investigation of such complaint of an unlawful housing practice.

(c) If the Commission determines after investigation that probable cause exists for the allegations made in the complaint, it shall attempt to eliminate the unlawful housing practice by means of conciliation and persuasion. The Commission shall not make public the details of any conciliation proceedings, but it may publish the terms of conciliation when a complaint has been satisfactorily adjusted.

(d) In any case of failure to eliminate the alleged unlawful housing practice charged in the complaint by means of conciliation or persuasion and upon making a determination of probable cause for crediting the allegations of a complaint filed hereunder, the Commission may direct the Law Director of the City of Akron to commence an action in the Court of Common Pleas within

*Exhibit A*

the county in which the alleged violation, which is the subject of the complaint, occurs, or in which any defendant resides, or transacts business, seeking appropriate injunctive relief against such defendant or defendants, in order to prevent any conduct tending to render ineffectual any steps that the Commission or the courts may take in order to eliminate or remedy such violation, and in such action to seek orders restraining and enjoining such defendant or defendants from selling, renting, or otherwise making unavailable to the person or persons discriminated against the housing accommodations with respect to which the complaint is made, and the court shall grant such temporary relief or restraining orders, upon such terms and conditions, as it deems just and proper, pending the final determination of the proceedings under this title. The Commission shall serve upon the person charged with having engaged or engaging in the unlawful housing practice, hereinafter referred to as respondent, a statement of the charges, made in the complaint and a notice of the time and place of the hearing. The hearing shall be held not less than ten (10) days after the service of the complaint. The respondent shall have the right to file an answer to the complaint, to appear at the hearing in person or to be represented by an attorney or any other person, in person or to be represented by an attorney or any other person, and to examine and cross-examine witnesses. At such hearing the Commission shall have the power to issue subpoenas to compel the attendance of the witnesses and the production of books and papers and other evidence necessary for a determination of the complaint.

(e) If upon all the evidence presented, the Commission finds that the respondent has not engaged in any unlawful housing practice, it shall state its findings of fact, dismiss the complaint, and instruct the Director of Law of the City of Akron to dismiss any legal proceedings which may have

**Exhibit A**

been instituted in the Court of Common Pleas. If upon all the evidence presented the Commission finds that the respondent has engaged or is engaging in an unlawful housing practice, it shall state its findings of fact and shall issue such order as the facts warrant. If the Commission further finds that relief of a final and permanent nature is warranted to eliminate or remedy any unlawful housing practice and to enforce the provisions of this title, it shall direct the Law Director of the City of Akron to prosecute any action or proceedings in the appropriate Court of Common Pleas as may be necessary to obtain such relief and enforcement.

**SECTION 7. EXCEPTIONS.**

Nothing in this ordinance shall prohibit the sale, lease, rental or transfer of real property or any interest therein as between private parties, provided, however, that such transaction or transactions shall not have the effect of placing the property upon the public or open market, or invite the public to bid upon, offer, or accept an offer for the sale, lease, rental or transfer of such property.

**SECTION 8. SEVERABILITY.**

The provisions of this ordinance are severable and if any provision, sentence, clause, section or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein,

**Exhibit A**

and if the person or circumstances to which the ordinance or any part thereof is inapplicable had been specifically exempted therefrom.

**SECTION 9.** This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, for the reason that it is desirable to eliminate discrimination in housing at the earliest possible moment, and provided this ordinance receives the affirmative vote of two-thirds of the members elected or appointed to Council it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

Passed: July 14, 1964

**JOSEPH A. DENHOLM** ♦  
Clerk of Council

**LARRY Z. KISH**  
Acting President of the Council

Approved: July 18, 1964

**EDWARD ERICKSON**  
Mayor

**Exhibit B, Annexed to Petition****(ORDINANCE No. 926-1964)**

ORDINANCE No. 926-1964 amending Section 6 of Ordinance No. 873-1964, passed July 14, 1964, relating to equal opportunity in housing, for clarification and to provide a penalty for violation of said ordinance, and declaring an emergency.

**BE IT ENACTED** by the Council of the City of Akron:

**SECTION 1.** That Section 6 of Ordinance No. 873-1964, passed July 14, 1964, be and the same is hereby amended to provide as follows:

**"SECTION 6. ENFORCEMENT PROCEDURE**

**"(a)** A complaint charging a violation of this ordinance may be made by the Commission itself or by an aggrieved individual.

**"(b)** The Commission shall make a prompt and full investigation of each complaint of an unlawful housing practice.

**"(c)** If the Commission determines after investigation that probable cause exists for the allegations made in the complaint, it shall attempt to eliminate the alleged unlawful housing practice by means of conciliation and persuasion. The Commission shall not make public the details of any conciliation proceedings, but it may publish the terms of conciliation when a complaint has been satisfactorily adjusted.

**"(d)** In any case of failure to eliminate the alleged unlawful housing practice charged in the complaint by means of conciliation or persuasion, the Commission shall hold a public hearing to deter-

*Exhibit B*

mine whether or not an unlawful housing practice has been committed. The Commission shall serve upon the person charged with having engaged or engaging in the unlawful housing practice, hereinafter referred to as respondent, a statement of the charges made in the complaint and a notice of the time and place of the hearing. The hearing shall be held not less than ten (10) days after the service of the complaint. The respondent shall have the right to file an answer to the complaint, to appear at the hearing in person or to be represented by an attorney or any other person, and to examine and cross-examine witnesses. At such hearing the Commission shall have the power to issue subpoenas to compel the attendance of the witnesses and the production of books and papers and other evidence necessary for a determination of the complaint.

“(e) If upon all the evidence presented, the Commission finds that the respondent has not engaged in any unlawful housing practice, it shall state its findings of fact, dismiss the complaint. If upon all the evidence presented the Commission finds that the respondent has engaged or is engaging in an unlawful housing practice, it shall state its findings of fact and shall issue such order as the facts warrant.

“(f) In the event the respondent fails to comply with any order issued by the Commission, it shall certify the case and the entire record of its proceedings to the City Director of Law for appropriate action to secure enforcement of the Commission's order.

“(g) Any person who violates any of the provisions of this ordinance or any rule or regulation adopted by the Commission or who fails to comply

**Exhibit B**

with any order of the Commission, shall be subject to a fine not exceeding Fifty and 00/100 Dollars and costs."

**SECTION 2.** That existing Section 6 of Ordinance No. 873-1964, passed July 14, 1964, be and the same is hereby repealed.

**SECTION 3.** This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, for the reason that it is desirable to clarify a portion of said ordinance and it is to the best interest of the public that a penalty for violation of said ordinance be enacted; and provided this ordinance receives the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

Passed: July 21, 1964

**JOSEPH A. DENHOLM**  
Clerk of Council

By: **ROSE RAIES**  
Clerk of Council

Deputy

**RALPH F. TURNER**  
President of the Council

Approved: July 22, 1964

**EDWARD ERICKSON**  
Mayor

**Alternative Writ of Mandamus****(TITLE OMITTED IN PRINTING)****(Filed: Court of Appeals, Summit Co., Feb. 3, 1965.)**

**BEFORE** the Court came plaintiff-relator, **Nellie Hunter**, and made application for the allowance of a Writ of Mandamus; in consideration of relator's application, the Court allowed an alternative writ to issue against the defendants-respondents, returnable to this Court on the 5th day of March 1965, at 10 o'clock, A.M.

**IT IS ORDERED** that the respondent, **Edward O. Erickson**, mayor of the City of Akron convene the Commission on Equal Opportunity in Housing established pursuant to City of Akron Amended Ordinance 873-1964, for the purpose of processing relator's complaint and the complaint of all others similarly situated; that **Edward O. Erickson**, Mayor of Akron, require that the Commission do all other things necessary to carry out their duties under Amended Ordinance 873-1964; that each and all of the Commissioners officially receive and investigate relator's complaint and the complaint of all others similarly situated, and then do all other things required by the Amended Ordinance; that the City Director of Law take such action as prescribed in the Amended Ordinance for the enforcement of the Commission's orders if the Commission deems it necessary to certify to him the record of its proceedings on relator's complaint; or that, at the time and place of the return of this Writ, respondents show cause why they have not done so.

**OSCAR HUNSICKER,**  
Presiding Judge.

**Answer****(TITLE OMITTED IN PRINTING)****(Filed: Court of Appeals, Summit Co., June 10, 1966.)**

Now come the Defendant and for their joint answer to the amended petition herein admit the allegations contained in the first, second, third, fourth, fifth, sixth, ninth, tenth and eleventh paragraphs therein contained.

Further answering, Defendants say that the electors of The City of Akron voting at the General Election held on November 3, 1964, approved an amendment to the Charter of The City of Akron, providing as follows:

**"Section 137. (Regulation of Real Property Rights)**

Any ordinance enacted by the Council of The City of Akron which regulates the use, sale, advertisements, transfer, listing assignment, lease, sublease or financing of real property of any kind or of any interest therein on the basis of race, color, religion, national origin or ancestry must first be approved by a majority of the electors voting on the question at a regular or general election before said ordinance shall be effective. Any such ordinance in effect at the time of the adoption of this section shall cease to be effective until approved by the electors as provided herein."

Further answering, Defendants say that any cause of action based upon Ordinance No. 873-1964 and/or Ordinance No. 926-1964 is barred by the Charter Amendment hereinabove recited.

Further answering, Defendants deny each and every allegation in the amended petition contained not herein specifically admitted to be true.

**ALVIN C. VINOPAL,**  
Assistant Director of Law,  
City of Akron,  
Attorney for Defendants.

**(Verification)**

## Reply

(TITLE OMITTED IN PRINTING)

(Filed: Court of Appeals, Summit Co., July 5, 1966)

Now comes the plaintiff-relator, and as reply to defendants' joint answer to the amended petition herein, says as follows:

1. Plaintiff admits that the electors of the City of Akron, voting at the November 3, 1964 general election cast a vote in favor of the language contained in single spacing in defendants' answer under the heading "Section 137. (Regulation of Real Property Rights)".

2. Plaintiff denies that the language referred to in any way affects Ordinance 873-1964 and/or Ordinance 926-1964 for the following reasons:

(a) Ordinance 873-1964 became effective on July 18, 1964 and Ordinance 926-1964 became effective on July 22, 1964. The language referred to as Section 137 was put on the ballot after petitions headed "Initiative Petition for Charter Amendment" containing valid signatures of more than ten per cent of the electors voting in the last general election of the City of Akron were filed with the Clerk of Council in the City of Akron August 25, 1964. The language referred to as Section 137, particularly its second sentence, is an attempt to have a referendum on Ordinances 873-1964 and 926-1964. Section 19 of the Charter of the City of Akron requires that petitions calling for a referendum must be filed with the Clerk of Council within thirty days after passage of an ordinance. The petitions referred to in this sub-paragraph were not filed within thirty days after passage of either ordinance and are therefore invalid under the Charter of the City of Akron and this supposed Section 137 was improperly on the ballot.

(b) Section 137 purports to affect "any ordinance enacted by the Council of the City of Akron which regulates

*Reply*

... real property ... or any interest therein on the basis of race, color, religion, national origin, or ancestry." Ordinances 873 and 926-1964 do not regulate real property on the basis of race, color, religion, national origin or ancestry, but simply attempt to give plaintiff-relator, and others similarly situated a means of redress when real property is attempted to be dealt with in the City of Akron on such irrational bases.

(c) Section 137 deals only with ordinances which "regulate" on the basis of race, etc. 873 and 926-1964 "prohibit" dealing with real property on the basis of race, etc., and the word regulate does not ordinarily include prohibit. Therefore, 873 and 926-1964 are not included within the ambit of Section 137.

(d) Section 137 is void and does not suspend the operation of 873 and 926-1964 because Section 137 is violative of equal protection and due process of the laws under the XIV Amendment to the Constitution of the United States of America for the following reasons:

(1) Section 137 was enacted with the sole purpose, intent and effect of preserving and reinforcing racial segregation in housing.

(2) Section 137 is the only Charter Amendment in the City of Akron which purports to bar City Council from effectively legislating in an area which otherwise is a proper subject of Municipal legislation. As such, Section 137 places a special disability on the enactment of anti-discrimination legislation in housing, whereas legislation in no other area is subject to such an impediment.

(3) Respondents have adopted the inconsistent position that various ordinances of the City of Akron committing the city to a prohibition of racial dis-

*Reply*

crimination in housing under the Federal Urban Renewal Programs are valid, although Ordinance 873/926-1964 which also prohibits racial discrimination has no validity because of Section 137. The adoption of this position by Respondents arbitrarily and discriminatorily deprives the plaintiff and other persons similarly situated of the right to protection in the general housing market, while persons involved in the various Federal Urban Renewal Programs are assured of such protection by the City of Akron. This is in spite of the fact that ordinances intending to protect both groups against racial discrimination were enacted by City Council with exactly the same procedure and none of these ordinances was approved by the voters of the City of Akron as seemingly called for by Section 137.

(4) Section 137 is violative of due process in that the means employed, conferring upon the electorate the right to approve an ordinance within the ambit of Section 137, does not bear a reasonable relationship to any legitimate governmental objective.

(e) Article I, Section 1, of the Constitution of the State of Ohio adopted March 10, 1851, and now in effect, reads insofar as pertinent as follows: "All men . . . have certain inalienable rights among which are those . . . of acquiring . . . property." Ordinances 873 and 926-1964 are recognitions of this constitutional right by the Council of the City of Akron, and together constitute an attempt to provide an effective method of implementation of these rights. As such, they are of so fundamental a nature that they may not be overturned by a vote of the electorate. When the voters attempted to do so, it was an attempt to render unenforceable that right given by the Constitution of Ohio, the supreme law of the State.

*Reply*

(f)

(1) Section 137 is an attempt to confer upon the electorate the right to approve ordinances regulating property on the basis of race prior to such an ordinance becoming effective. Section 137 was proposed by initiative petition. Section XVII of the Charter of the City of Akron provides insofar as relevant as follows:

"Ordinances and Resolutions providing for the exercise of any and all powers of government granted by the Constitution or now delegated or hereafter delegated to Municipal Corporations by the General Assembly may be proposed by initiative petition."

Because of the supremacy of the Federal Constitution, neither the Constitution of the State of Ohio nor the General Assembly could delegate to Municipal Corporations any power of government which would regulate property on the basis of race. The initiative petitions supposedly putting Section 137 on the ballot are, therefore, beyond the legitimate scope of the initiative petition power conferred by Section XVII of Akron's Charter.

(2) The Constitution of the State of Ohio adopted in 1851 in Article II, Section 1 f, reads as follows:

"The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action."

In the same fashion that Section 137 is beyond the scope of Akron's Charter, Section XVII, it is also beyond the scope of the "questions" referred to in

**Reply**

Article II, Section 1 f of the Constitution of the State of Ohio, since no municipality may now or hereafter be authorized by law to regulate property on the basis of race.

(g) The Ohio Constitution Article XVIII, Section 3, confers upon municipalities the right to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations not in conflict with general law. Section 137 is, therefore, valid only if within the ambit of Article XVIII, Section 3, of the Ohio Constitution. Akron does not have and could not have, because of the XIV Amendment to the Constitution of the United States, the power to regulate property on the basis of race. Section 137 is, therefore, beyond any "power of local self-government" or other law "not in conflict with general laws".

(h) 42 U.S.C. Section 1982 reads as follows:

"All citizens of the United States shall have the same right in every state and territory as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

It was found by the Council of the City of Akron that non-white citizens of Akron do not have the same right to purchase real property as is enjoyed by white citizens of Akron (see the whereas clauses to Ordinance 873). Council used its best judgment to attempt to implement for Akron's non-white citizens the same right. Section 137 attempts to negate Council's procedural devices. Section 137, however, is in conflict with 42 U.S.C. Section 1982 and because of the supremacy clause is a nullity.

**BERNARD R. ROETZEL and  
NORMAN PURNELL,**  
Attorneys for Plaintiff-Relator.

(Verification)

## Stipulation

(TITLE OMITTED IN PRINTING)

(Filed: Court of Appeals, Summit Co., Sept. 16, 1966.)

It is hereby stipulated between plaintiff and defendants subject to the right of any party to object to any stipulated matter subsequently at trial as to relevancy, materiality and competency, as follows:

1. Plaintiff-relatrix is a citizen of Akron, Ohio and therefore, one of the persons for whose benefit Ordinances 873-1964 and 926-1964 were enacted to protect against unfair housing practices caused by discrimination on the basis of race, color, religion, national origin or ancestry.

2. On the 26th and 27th of January 1965 the Mayor and members of the Commission were served with a copy of an Affidavit alleging that, among other things, in her efforts to locate desirable housing, relatrix was discriminated against because of her race, color and ancestry.

3. The Commission has not fully organized itself; it does not have a permanent Chairman or other person authorized to call meetings; and it has not adopted rules and regulations which may be necessary to carry out the purposes and provisions of this Ordinance.

4. By Section 2 of the amended Ordinance the Commission is created in the office of the Mayor to effectuate the policy declared by Section 1 of the amended Ordinance.

5. The petitions which resulted in Section 137 being put on the ballot at the November 3, 1964 General Election were filed with the Clerk of Council of the City of Akron, August 25, 1964.

*Stipulation*

6. Section 19 of the Charter of the City of Akron at that time read as follows:

**SECTION 19. Referendum, How Ordered and When Held.**

When a petition signed by ten (10) per centum of the electors of the City shall have been filed with the Clerk of the Council within thirty days after an ordinance or resolution shall have been passed by the Council ordering that such ordinance or resolution be submitted to the electors of the City for their approval or rejection, and said petition is found to be sufficient by the Clerk of the Council, as hereinafter provided, the election officer, officers or board having control of elections in the City shall cause such ordinance or resolution to be submitted to the electors of the City for their approval or rejection at the next succeeding regular or general election in any year occurring subsequent to thirty days after the Clerk of the Council finds such petition or amended petition to be sufficient as hereinafter provided; provided, however, that such ordinance or resolution may be submitted to the qualified electors of the City at a special election instead of a regular or general election, provided that thirty days' notice is given by the Council and such election is regularly called by the Council in the manner provided by law. No such ordinance shall go into effect until and unless approved by the majority of those voting upon the same. Nothing in this article shall prevent the City, after the passage of any ordinance or resolution from proceeding at once to give any notice or make any publication required by such ordinance or resolution.

*Stipulation*

\*7. The attached Charter is a true and accurate version of the City's Charter, as it existed at all times material hereto.

**BERNARD R. ROSTEEL and  
NORMAN PURNELL,  
Attorneys for Plaintiff-Relatrix.**

**ALVIN C. VINOPAL,  
Assistant Director of Law, City of Akron,  
Attorney for Defendant-Respondents.**

**Charter, Annexed to Foregoing Stipulation****THE CHARTER**

OF THE

**CITY OF AKRON****OHIO****AMENDED TO****NOVEMBER 5, 1963****CORPORATE POWERS, RIGHTS, AND PRIVILEGES****SECTION 1. NAME, BOUNDARIES, AND POWERS.**

The inhabitants of the City of Akron, as its limits now are; or may hereafter be, shall be a body politic and corporate by name The City of Akron, and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; may acquire property in fee simple or lesser interest or estate by purchase, gift, devise, appropriation, lease, or lease with privilege to purchase, for any municipal purpose; may sell, lease, hold, manage and control such property and make any and all rules and regulations by ordinance or resolution which may be required to carry out fully all the provisions of any conveyance, deed, or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property; may acquire, construct, own, lease and operate and regulate public utilities; may assess, levy and collect taxes for general and special purposes on all the subjects or objects which the City may lawfully tax under the provisions of this Charter; may levy and collect assessments for local improvements; may borrow money on the faith and credit of the City by the issue or sale of bonds or notes of the City; may appropriate the money of the City for all purposes lawful under the provisions of this Charter; may

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create, provide for, construct, regulate and maintain all things of the nature of public works and improvements; may license and regulate persons, corporations and associations engaged in any business, occupation, profession or trade; may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof; may do all things necessary to promote the health, convenience, comfort and welfare of its citizens and advance the moral, social, physical and intellectual standard of its citizenship, and for such purposes it may exercise any or all of the power conferred in this section; may regulate and limit the height and bulk of buildings hereafter erected, and may regulate and prescribe the construction and the material used in all buildings, and the maintenance and occupancy thereof and regulate and determine the area of yards, courts, and other open places, and may divide the City into districts of such number, space and area as may be deemed best suited to carry out these purposes; may regulate and restrict the location of trades and industries, and the location of buildings designed for specified uses, and may divide the City into districts of such number, shape and area as may be deemed best suited to carry out these purposes; may regulate and control the use, for whatever purposes, of the streets and other public places; may create, establish, abolish and organize offices and fix the salaries and compensations of all officers and employees; may make and enforce local police, sanitary and other regulations; may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof. The City shall have all powers that now are, or hereafter may be granted to municipalities by the Constitution or laws of Ohio; and all powers, whether expressed or implied,

## *Charter*

shall be exercised and enforced in the manner prescribed by this Charter, or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the Council, and when not prescribed by this Charter or amendments thereto, or ordinance of Council, then said powers shall be exercised in the manner prescribed by the State law.

### SECTION 2. ENUMERATED POWERS NOT EXCLUSIVE.

The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated herein, implied thereby or appropriate to the exercise thereof, the City shall have and may exercise all other powers which, under the Constitution and laws of Ohio, it would be competent for this Charter specifically to enumerate.

## INITIATIVE AND REFERENDUM

### SECTION 17. MANNER OF EXERCISE OF INITIATIVE.

Ordinances and resolutions providing for the exercise of any and all powers of government granted by the Constitution or now delegated or hereafter delegated to municipal corporations by the General Assembly, may be proposed by initiative petition. Such initiative petition must contain the signatures of not less than seven (7) per centum of the electors of the City. The full text of the proposed ordinance or resolution shall be set forth in such initiative petition. Initiative petitions shall be filed with the Clerk of the Council. The proposed ordinance or resolution shall be submitted for the approval or rejection of the electors of the City at the next succeeding regular or general election occurring subsequent to thirty days after such initiative petition or amended petition is found to be sufficient by the

*Charter*

Clerk of the Council as hereinafter provided. Any ordinance or resolution proposed by initiative petition may also be submitted to the qualified electors of the City at a special election instead of a regular or general election, provided that thirty days' notice is given by the Council and such election is regularly called by the Council in the manner provided by law.

**SECTION 18. WHEN ORDINANCES AND RESOLUTIONS SHALL BECOME EFFECTIVE.**

No ordinance or resolution shall go into effect until thirty days after it shall have been passed by the Council, except as hereinafter provided.

**SECTION 19. REFERENDUM, HOW ORDERED AND WHEN HELD.**

When a petition signed by ten (10) per centum of the electors of the City shall have been filed with the Clerk of the Council within thirty days after an ordinance or resolution shall have been passed by the Council ordering that such ordinance or resolution be submitted to the electors of the City for their approval or rejection, and said petition is found to be sufficient by the Clerk of the Council, as hereinafter provided, the election officer, officers or board having control of elections in the City shall cause such ordinance or resolution to be submitted to the electors of the City for their approval or rejection at the next succeeding regular or general election in any year occurring subsequent to thirty days after the Clerk of the Council finds such petition or amended petition to be sufficient as hereinafter provided; provided, however, that such ordinance or resolution may be submitted to the qualified electors of the City at a special election instead of a regular or general election, provided that thirty days' notice is given by the Council and such election is regularly called by the Council in the manner provided by law. No such

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ordinance shall go into effect until and unless approved by the majority of those voting upon the same. Nothing in this article shall prevent the City, after the passage of any ordinance or resolution, from proceeding at once to give any notice or make any publication required by such ordinance or resolution.

**SECTION 20. APPLICATION OF REFERENDUM.**

Any ordinance or resolution passed by the Council shall be subject to referendum except as hereinafter provided. Whenever the Council is by law required to pass more than one ordinance or resolution to complete the legislation necessary to make and pay for any public improvement, the provisions of Section 17 to 26, inclusive, in this Charter shall apply only to the first ordinance or resolution required to be passed and not to any subsequent ordinances or resolutions relating thereto. Ordinances or resolutions providing for appropriations for the current expenses of the City, or for street improvements petitioned for by the owners of the majority of the feet front of the property benefited and to be specially assessed for the cost thereof, and emergency ordinances or resolutions necessary for the immediate preservation of the public peace, health or safety shall go into immediate effect, or at the time stated in the ordinance. Such emergency ordinances or resolutions must, upon a "Yea" and "Nay" vote, receive the vote of two-thirds of all the members elected to the Council, and the reasons for such necessity shall be set forth in one section of the ordinance or resolution. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder, and all rights and privileges conferred by it shall be null and void; provided, however, that such measure so repealed shall be deemed sufficient authority for any payment made or ex-

## *Charter*

pense incurred in accordance with the measure previous to the referendum vote thereon. The provisions of Sections 17 to 26, inclusive, of this Charter shall apply to pending legislation provided for any public improvement.

### **SECTION 21. THE PETITION—REQUIREMENTS, CONSTRUCTION AND EFFECT OF ELECTION.**

Any initiative or referendum petition may be presented in separate parts, but each part shall contain a full and correct copy of the title and text of the ordinance or resolution proposed or sought to be referred. Each signer of an initiative or referendum petition shall sign his name in ink or indelible pencil. Each signer of an initiative or referendum petition must be an elector of the City. With each signature shall be stated the place of residence of the signer, giving the street and number and ward and precinct. Each part of such petition shall contain the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of signers of such part of such petition, and shall state that, to the best of his knowledge and belief, each of the signatures contained on such part is the genuine signature of the person whose name it purports to be, and believes that such persons are electors of the City, and that they signed such petition with the knowledge of the contents thereof. The petitions and signatures upon such petitions shall be prima facie presumed to be in all respects sufficient. No ordinance or resolution submitted to the electors of the City, and receiving an affirmative majority of the votes cast thereon, shall be held ineffective or void on account of the insufficiency of the petitions by which such submission of the same shall have been procured; nor shall the rejection by a majority of the votes cast thereon of any ordinance or resolution submitted to the electors of the City be held invalid for such insufficiency. The basis upon which the

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required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of Mayor at the last preceding election therefor.

**SECTION 22. DUTIES OF CLERK OF COUNCIL.**

Within ten days after the filing of any initiative or referendum petition the Clerk of the Council shall determine the sufficiency of such petition and attach thereto a certificate showing the result of his examination. If the Clerk shall certify that the petition is insufficient he shall set forth in the certificate the particulars in which the petition is defective and shall return a copy of the certificate to the person designated in such petition to receive it. Such initiative or referendum petition may be amended at any time within twenty days after the making of a certificate of insufficiency by the Clerk, by filing a supplementary petition. Within ten days after such petition is amended by filing a supplementary petition, the Clerk shall make like examination of the amended petition, and, if his certificate shall show the same to be still insufficient, he shall return it to the person designated in such petition to receive it without prejudice, however, to the filing of a new petition. If the Clerk of the Council shall determine that the petition or amended petition is sufficient, he shall at once submit the same with his certificate to the Council. The Council shall thereupon order that the ordinance or resolution proposed or sought to be referred be submitted to the qualified electors of the City for their approval or rejection at an election to be held as here prescribed. The Clerk of Council shall forthwith transmit a duly certified copy of such order to the Deputy State Supervisors of Elections of Summit County, Ohio, or their successors. The election authorities shall cause publication of notice and all arrangements to be made for holding such election, and the same shall be conducted and the result thereof returned and declared in all respects as are the results of general municipal elections.

*Charter***SECTION 23. INITIATIVE AND REFERENDUM BALLOTS.**

The ballots used when voting upon any measure proposed by initiative petition or referred by referendum petition shall state the title of the ordinance or resolution and shall also contain a statement in clear and concise language descriptive of the substance of such ordinance or resolution, and below such statements the two propositions, "For the Ordinance" (or Resolutions, as the case may be), and "Against the Ordinance" (or Resolution, as the case may be). Immediately at the left of each proposition there shall be a square in which, by making a cross (X) the voter may vote for or against the proposed measure. If a majority of the electors voting on any such measure shall vote in favor thereof, it shall thereupon become an ordinance or resolution of the City. The statement descriptive of the substance of the ordinance or resolution to be placed on the ballot shall be drawn by the Director of Law and by him furnished to the election authorities having charge of the printing of the ballots.

• • •

**SECTION 25. REFERENDUM NOT TO APPLY.**

The following ordinances and measures shall not be subject to the referendum but shall go into effect either immediately or at the time indicated therein, as Council may determine:

(a) Annual appropriation ordinances. (b) Ordinances or resolutions providing for the approval or disapproval of appointments or removals and appointments or removals made by Council. (c) Actions by Council on the approval of official bonds. (d) Ordinances or resolutions providing for the submission of any proposition to the vote of the electors. (e) Ordinances providing for street improvements petitioned for by owners of a majority of the feet front of

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the property benefited and to be specially assessed for the cost thereof.

**SECTION 26. ENACTMENT OR REPEAL BY COUNCIL.**

If at any time before an election is held, submitting an ordinance or resolution proposed by initiative petition, the Council shall pass such ordinance or resolution, then no such election shall be held. If at any time before an election is held, referring an ordinance by referendum petition for approval or rejection of the electors, the Council shall repeal such ordinance, then no such election shall be held.

**THE COUNCIL****SECTION 27. CREATION OF THE COUNCIL.**

There is hereby created a Council which shall have full power and authority, except as otherwise herein provided, to exercise all the powers which now are or may be hereafter conferred upon municipalities by the Constitution of Ohio, and all the powers conferred upon the City of Akron by this Charter, and any additional powers which have been or may be conferred upon municipalities by the General Assembly.

• • •

**SECTION 34. PROCEDURE OF COUNCIL.**

The Council shall act only by ordinance or resolution. The affirmative vote of the majority of the members elected to the Council shall be necessary to adopt any ordinance or resolution. The vote upon the passage of all ordinances and resolutions shall be taken by "Yeas" and "Nays" and entered upon the journal. Each proposed ordinance or resolution shall be introduced in written or printed form and shall not contain more than one subject, which shall be

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clearly stated in the title; but general appropriation ordinances may contain the various subjects and accounts for which moneys are to be appropriated. The enacting clause of all ordinances passed by the Council shall be: "BE IT ENACTED BY THE COUNCIL OF THE CITY OF AKRON." The enacting clause of all ordinances submitted by initiative shall be: "BE IT ENACTED BY THE PEOPLE OF THE CITY OF AKRON." No ordinance, unless it be declared an emergency measure, shall be passed until it has been read on three separate days or the requirement of reading on three separate days has been dispensed with by a vote of seven members of the Council.

**SECTION 35. EMERGENCY MEASURES.**

The Council may, by two-thirds vote of its members, pass emergency measure (sic) to take effect at the time indicated therein. Emergency measures shall contain a section in which the emergency is set forth and defined. Ordinances appropriating money may be passed as emergency measures, but no measure making a grant, renewal or extension of a franchise or other special privilege, or regulating the rate to be charged for its services by any public utility, shall be so passed.

**SECTION 136. AMENDMENT.**

Proposed amendments to this Charter may be submitted to the electors of the City by a vote of six members of the Council, and upon petitions signed by ten per centum of the electors of the City, setting forth any such proposed amendment prepared and filed with the Clerk of the Council in the manner and form prescribed herein for the submission of ordinances by initiative petition, such proposed amendment shall be so submitted by the Council. The percentage aforesaid shall be based upon the total vote cast at the last preceding general municipal election. The ordi-

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nance providing for the submission of any such proposed amendment shall require that such proposed amendment be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the amendment at a special election to be called and held within the time aforesaid. The Clerk of the Council shall transmit to the Deputy State Supervisors of elections of Summit County, Ohio, or their successors, a duly authenticated copy of such ordinance forthwith upon its passage, and not less than thirty days prior to such election the Clerk of the Council shall mail a copy of such proposed amendment to each elector whose name appears upon the registration books of the last regular or general election held in the City. If such proposed amendment be approved by a majority of the electors voting thereon, it shall become a part of the Charter at the time fixed therein; and if no time be fixed therein, then it shall become a part of the Charter when the results of the official canvass of such election are announced.

**SECTION 137. AMENDMENT.****(Regulation of Real Property Rights)**

Any ordinance enacted by the Council of The City of Akron which regulates the use, sale, advertisements, transfer, listing assignment, lease, sublease or financing of real property of any kind or of any interest therein on the basis of race, color, religion, national origin or ancestry must first be approved by a majority of the electors voting on the question at a regular or general election before said ordinance shall be effective. Any such ordinance in effect at the time of the adoption of this section shall cease to be effective until approved by the electors as provided herein.

**Opinion of Court of Appeals****IN THE  
COURT OF APPEALS****FOR SUMMIT COUNTY, OHIO**  

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**THE STATE ex rel. NELLIE HUNTER,**  
**Plaintiff-Relator,**  
***against***

**EDWARD O. ERICKSON, Mayor, etc., et al.,**  
**Defendants-Respondents.**

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(DECIDED Feb. 8, 1967)

**BRENNEMAN, J.**

This original action in this court is brought by the relator seeking a writ of mandamus. The relator's petition requests an order of mandamus to direct the Mayor, and all other defendants, to process a complaint filed by relator with the Commission on Equal Opportunity in Housing, as provided in Ordinance Number 873-1964; and Section 6 of this ordinance as amended by Ordinance Number 926-1964.

A demurrer to the relator's petition was sustained by this court as a result of the rule announced in the case of *Porter v. Oberlin*, 1 Ohio St. 2d 143, which stated that Section 3 of the Oberlin ordinance (enforcement procedure) was unconstitutional. Following that rule, this court decided that Section 6 of the Akron ordinance (enforcement procedure) was unconstitutional (both sections being substantially the same), and sustained the demurrer of respondents as previously stated. The Supreme Court of Ohio, on an appeal from the sustaining of the demurrer, announced in 6 Ohio St. 2d 130 (this case) that Section 6

*Opinion of Court of Appeals*

(enforcement procedure) of the Akron ordinance was constitutional and, by mandate, ordered the demurrer overruled. The matter is now before this court on its merits.

The factual situation of this case is not subject to controversy, as the facts are either stipulated or not denied in the pleadings.

On July 14, 1964, the Council of the City of Akron passed Ordinance Number 873-1964. On July 21, 1964, Section 6 of the ordinance was amended by passing Ordinance Number 926-1964. The amended ordinance prohibits discrimination in the sale or rental of houses, on the basis of race, color, religion, or national origin. The ordinance provided enforcement procedure and violation penalties. That portion of the ordinance providing for enforcement procedure establishes in the office of the Mayor of the City of Akron a commission to be appointed by the Mayor, whose duties are, in part, to receive and investigate complaints, hold hearings, and determine facts concerning complaints; and to seek conciliation of such complaints.

At the general election held November 3, 1964, a proposed amendment to the Charter of the city of Akron was submitted to the electorate, which amendment provided:

**"Section 137. (Regulation of Real Property Rights)**

**"Any ordinance enacted by the Council of the City of Akron which regulates the use, sale, advertisement, transfer, listing, assignment, lease, sublease or financing of real property of any kind or of any interest therein on the basis of race, color, religion, national origin or ancestry must first be approved by a majority of the electors voting on the question at a regular or general election before said ordinance shall be effective. Any such ordinance in effect at the time of the adoption of this section shall cease to be effective until approved by the electors as provided herein."**

*Opinion of Court of Appeals*

Charter Section 137 was adopted by a majority vote of the electorate of the city of Akron, Ohio, at the general election held November 3, 1964.

The relator alleges that on January 26th and January 27th, 1965, the Mayor and members of the Commission on Equal Opportunity in Housing, of the city of Akron, were served with a complaint alleging that the relator was discriminated against in her efforts to locate desirable housing, and that the respondents refused, and continue to refuse, to process her complaint, as provided by Ordinance Numbers 873-1964 and 926-1964 of the city of Akron.

On February 3, 1965, the relator filed a petition seeking a writ of mandamus to compel performance by the respondents of their official duties as provided in Ordinance Number 873-1964, and amended Ordinance Number 926-1964.

In answer to the petition of the relator, the respondents claim that Charter Amendment No. 137, as passed November 3, 1964, bars a cause of action predicated on the two ordinances relied upon by the relator for an order in mandamus to force the Commission on Equal Opportunity in Housing to process her complaint.

One question is thus raised by all of the pleadings: Is Charter Amendment No. 137 as passed a valid enactment, and not in conflict with the general laws of the land?

The relator contends the enactment of Charter Amendment No. 137 is invalid because:

1. It exceeds the authority conferred by the Ohio Constitution, Article II, Section 1f, and Article XVIII, Section 3; and the Akron Charter, Section 17 (initiative).

2. It is in contravention of rights secured by the Ohio Constitution, Article I, Section 1. (referendum).

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3. It was not validly enacted in that it did not comply with Section 19 of the Akron Charter

4. It denies equal protection as set forth in the XIV Amendment to the Constitution of the United States.

5. It does not repeal Ordinances 873-1964 and 926-1964, because the ordinances are prohibitive, and the amendment applies only to regulatory ordinances.

Article II, Section 1f, of the Constitution of Ohio, adopted in 1912, provides:

"The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law."

There is no dispute concerning Section 17 of the Charter of the city of Akron providing procedure for initiative enactment of laws; and we do not here present the entire section verbatim.

The position of the relator is to the effect that Charter Amendment No. 137 is not an initiative enactment, but a referendum directed at Ordinances Numbers 873-1964 and 926-1964. The relator further says that Section 19 of the Charter of the city of Akron (referendum procedure should have been followed, but instead Section 17 (initiative procedure) was followed.

We are of the opinion that the initiative petitions submitting Amendment No. 137 to the Charter of the city of Akron were proper; that the amendment was not directed to any specific legislation named therein (none was men-

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tioned), and only the subject matter itself (all legislation regulating " . . . the use, sale . . . of real property . . . ") was submitted to the electorate.

It is true that Amendment No. 137 repeals Ordinances Numbers 873-1964 and 926-1964; but it also repeals *all other* ordinances regulating "the use, sale . . . of real property . . . on the basis of race, color, religion, national origin or ancestry . . .", if any there be." It cannot be said that it is directed to a specific ordinance when it is directed to all ordinances of the same class. It repeals Ordinances Numbers 873-1964 and 926-1964 only because they fall within the class of legislation, not by reason of any specific direction in the amendment.

The relator cites to this court the case of *State, ex rel. Smith vs. City of Fremont*, 116 Ohio St. 469, as authority that initiative legislation cannot be used as a substitute for referendum. As pointed out in the brief of counsel, that case was overruled in the learned opinion of Judge Zimmerman in the case of *State, ex rel. Sharpe vs. Hitt*, Auditor, 155 Ohio St. 529. A careful reading of that opinion is aptly summed up in paragraph 3 of the syllabus:

"The electors of a municipality may by the initiative enact a measure conflicting with or repealing legislation previously passed by the municipal council, so long as the subject matter of such initiative ordinance is within the powers of the municipality to control by legislative procedure."

Further, it may be stated that even though this was a charter amendment, and not an enactment of an ordinance, it is also permissible, in the opinion of this court, for it has been determined in the case of *City of Youngstown vs. Craver, et al., Board of Elections, etc.*, 127 Ohio St. 195; 187 N.E. 715, that a city charter may be abolished by the

*Opinion of Court of Appeals*

initiative. It is logical to assume that if a city charter may be abolished by this method, it may also be amended by the same method.

Was Charter Amendment No. 137 authorized by law and subject to control by legislative action, as set forth in Article II, Section 1f, of the Constitution of Ohio?

Has Article I, Section 1, of the Constitution of Ohio, granting to Ohio citizens the inalienable right of "acquiring \* \* \* property" been violated by Charter Amendment No. 137?

Is Charter Amendment No. 137 in conflict with the Fourteenth Amendment to the Constitution of the United States?

We have answered the first question in the affirmative, for the reasons stated, and the authorities cited.

As to the second and third questions, both Section 1 of Article I of the Ohio Constitution, and the Fourteenth Amendment to the Constitution of the United States, grant to citizens the right to acquire and possess property. This is fundamental law, and it is not necessary to cite authorities, either in Ohio or throughout the land, upholding this right.

We must look to Charter Amendment No. 137 (previously set out in full in this opinion), to determine the question of conflict with, or denial of, the rights granted.

Charter Amendment No. 137 says, in effect, that any ordinance *regulating* the "use, sale \* \* \* of real property \* \* \* on the basis of race, color, religion, national origin or ancestry \* \* \*" cannot be passed by the Council of the city of Akron, but must be submitted to the electorate for passage and adoption.

It does not deny the rights granted to everyone to acquire and possess property. All rights granted the citizens of Akron to acquire and possess property are retained. It denies the Council of the city of Akron the power to pass legislation regulating the "use, sale \* \* \* of real property"

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when the basis of that legislation is predicated upon "race, color, religion, national origin or ancestry". It retains the power to pass such regulatory legislation in the people from whom all powers, including those of the council of the city of Akron, originate. It limits the ways in which such legislation may be passed. It does not deny the people the opportunity to pass it. Such limitation of power in the legislative branch of government is not a denial of a right. It is a procedural matter, so long as the right to legislate is not denied the people.

We are not called upon to decide legislation denying our citizens their rights to acquire and possess property. We are required only to determine if legislative powers may be retained in the people, as opposed to a legislative body, i.e., the council of the city of Akron, insofar as Charter Amendment No. 137 is concerned.

We determine that Charter Amendment No. 137 is a valid enactment, not in conflict with constitutional authority, either State or Federal.

For the reasons stated, we find that Charter Amendment No. 137 repeals Ordinances Numbers 873-1964 and 926-1964, of the City of Akron.

We further conclude that no law now exists, nor did any law exist on February 3, 1965, upon which the petitioner may predicate an action for a writ of mandamus; that the question is moot, and the petition of the relator must be denied.

**Writ denied.**

**DOYLE, P.J., and HUNSMICKER, J., concur.**

# Journal Entry

IN THE  
COURT OF APPEALS  
FOR SUMMIT COUNTY, OHIO

---

STATE ex rel. NELLIE HUNTER,  
Plaintiff-Relator,  
*against*

EDWARD O. ERICKSON, Mayor, etc., et al.,  
Defendants-Respondents.

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(Filed: Court of Appeals, Summit Co., April 11, 1967)

This day this matter came on to be heard upon the pleadings, stipulations and arguments of Plaintiff-Relator and Defendants-Respondents, and upon consideration thereof it is ORDERED, ADJUDGED AND DECREED:

1. What is referred to in the pleadings as Charter Amendment Number 137 was validly enacted at the November, 1964 election, and it is not in conflict with constitutional authority, either State or Federal;
2. Charter Amendment Number 137 repealed Ordinances Numbers 873-1964 and 926-1964 of the City of Akron; and
3. Neither on January 26, January 27 or February 3, 1965 did any law exist nor does any law now exist upon which relator might predicate its action for a Writ of Mandamus, and the question raised by this lawsuit is therefore moot.

**Notice of Appeal**

For the above reasons the writ sought is denied.  
Costs are taxed against Plaintiff-Relator.

**MYRON T. BRENNEMAN,**  
Presiding Judge of the Court of Appeals.

Approved:

**BERNARD R. ROETZEL-NORMAN PURNELL,**  
for Nellie Hunter.

**ALVIN C. VINOPAL,**  
for the City of Akron.

**Notice of Appeal**

(Title Omitted in Printing)

(Filed: Court of Appeals, Summit Co., April 28, 1967)

Now comes the Plaintiff-Appellant and gives notice of appeal from the judgment entered in the Court of Appeals of Summit County, Ninth Judicial District, on the 11th day of April 1967, denying appellant herein a writ of mandamus as prayed for in her amended petition.

This is a case originating in the Court of Appeals.

This case involves a substantial constitutional question.

**NORMAN PURNELL-BERNARD R. ROETZEL,**  
Attorneys for Appellant.

# Opinion of the Supreme Court of Ohio

JANUARY TERM, 1967.

[12 Ohio St. 2d]

## Statement of the Case.

THE STATE, EX REL. HUNTER, APPELLANT, v. ERICKSON, MAYOR,  
ET AL., APPELLEES.

[Cite as State, ex rel. Hunter, v. Erickson, 12 Ohio St. 2d  
116.]

*Municipal corporations—Local police regulations—Power to enforce includes power to prohibit—Ordinance regulating sale or rental of real property—On basis of race or religion—Charter amendment requiring approval by electors—Constitutional law.*

1. The power given to municipalities by Section 3 of Article XVIII to adopt and enforce local police regulations includes the power by such regulations to prohibit. (Paragraph two of the syllabus of *West Jefferson v. Robinson*, 1 Ohio St. 2d 113, approved and followed.)
2. The charter of a municipal corporation may lawfully be amended to provide that any ordinance, which regulates the use, sale, advertisement, transfer, listing, assignment, lease, sublease or financing of real property on the basis of race, color, religion, national origin or ancestry, must first be approved by the electors of such municipality, and that any such ordinance in effect at the time of adoption of such a charter amendment shall cease to be effective until approved by such electors even though such voter approval is not required with respect to other kinds of ordinances.

(No. 41003—Decided December 27, 1967.)

APPEAL from the Court of Appeals for Summit County.

*Opinion of the Supreme Court of Ohio*

This action in mandamus was instituted in the Court of Appeals for Summit County on February 3, 1965. Relator alleges that she served upon respondents, the mayor and members of the Akron Commission on Equal Opportunity in Housing, "a copy of an affidavit, alleging \* \* \* that in her efforts to locate desirable housing, relator was discriminated against because of her race, color, and ancestry," and that the commissioners "declined to process or handle" her complaint.

An Akron ordinance, passed and amended in July 1964, prohibits such discrimination, and provides in Section 6 thereof that "a complaint charging a violation of this ordinance may be made \* \* \* by an aggrieved individual," and that "the commission shall make a prompt and full investigation of each complaint."

After providing for an answer to and a hearing on such a complaint, Section 6 of that ordinance provides further:

"(e) If upon all the evidence presented, the commission finds that the respondent has not engaged in any unlawful housing practice, it shall state its findings of fact, dismiss the complaint. If upon all the evidence presented the Commission finds that respondent has engaged or is engaging in an unlawful housing practice, it shall state its findings of fact and shall issue such order as the facts warrant.

"(f) In the event the respondent fails to comply with any order issued by the commission, it shall certify the case and the entire record of its proceedings to the city Director of Law for appropriate action to secure enforcement of the commission's order."

The Court of Appeals sustained the demurrer of respondents and denied the writ.

In so holding, the Court of Appeals followed that part of the decision of this court in *Porter v. Oberlin* (1965), 1 Ohio St. 2d 143, 205 N. E. 2d 363, which was based upon Judge Guernsey's concurring opinion and which had held invalid (by a vote of 4 to 3) provisions similar to those in Section 6 of the Akron ordinance. However, because one of the members of this court, who had agreed with that part of

*Opinion of the Supreme Court of Ohio*

the decision in *Porter v. Oberlin*, *supra*, concluded that the respondents had no standing to question the validity of Section 6 of the Akron ordinance, this court by a vote of four to three reversed the judgment of the Court of Appeals. See *State ex rel. Hunter v. Erickson*, 6 Ohio St. 2d 130, 216 N. E. 2d 371.

On remand to that court, respondents filed an answer alleging that the voters of Akron had, in November 1964, adopted Section 137 as an amendment to the charter of Akron. That section reads:

"Any ordinance enacted by the council of the city of Akron which regulates the use, sale, advertisement, transfer, listing assignment, lease, sublease or financing of real property of any kind or of any interest therein on the basis of race, color, religion, national origin or ancestry must first be approved by a majority of the electors voting on the question at a regular or general election before said ordinance shall be effective. Any such ordinance in effect at the time of the adoption of this section shall cease to be effective until approved by the electors as provided herein."

Thereafter, relator filed a reply, questioning the validity of that charter amendment, and the cause was submitted on the pleadings and stipulations.

The Court of Appeals held that the hereinbefore referred to ordinance ceased to be effective on adoption of the foregoing amendment to the Akron charter, and therefore its judgment denied relator a writ of mandamus.

The cause is before this court on appeal from that judgment.

*Mr. Norman Purnell* and *Mr. Bernard R. Roetzel*, for appellant.

*Mr. William R. Baird*, director of law, and *Mr. Alvin C. Vinopal*, for appellees.

**TAFT, C.J.** It is first contended that the ordinance involved in the instant case is not, within the meaning of Section 137 of the Akron Charter, one "which regulates," because it prohibits certain acts, including the discrimina-

*Opinion of the Supreme Court of Ohio*

tion against relator that is alleged in the petition. However, as stated in paragraph two of the syllabus of *West Jefferson v. Robinson* (1965), 1 Ohio St. 2d 113, 205 N.E. 2d 382: "The power given to municipalities by Section 3 of Article XVIII to adopt and enforce local police regulations includes the power by such regulations to prohibit." Actually, it did not include that power, there would be a very serious question as to whether the prohibitory parts of the ordinance that are relied upon by relator ever had any validity, notwithstanding our holding in *Porter v. Oberlin, supra* (1 Ohio St. 2d 143), that similar prohibitory parts of the ordinance there involved were valid.

It is obvious therefore that, if Section 137 of the Akron Charter is valid, its words require the conclusion that the ordinance relied upon by relator has ceased to be effective. Admittedly, that ordinance was in effect when that charter section was adopted and that ordinance has never been approved by the electors.

Relator contends that Section 137 of the Akron Charter is invalid by reason of Article XIV of the Amendments to the Constitution of the United States. In support of this contention, relator relies upon *Reitman v. Mulkey* (1967), 387 U. S. 369, 18 L. Ed. 830, 87 S. Ct. 1627.

That case dealt with a state constitutional provision which prohibited the state or any agency of the state from denying, or limiting "the right of any person . . . to decline to sell, lease or rent . . . property to such person or persons as he, in his absolute discretion, chooses."

Obviously, Section 137 of the Akron Charter does not do this. Notwithstanding its provisions, the legislative authority of Akron may still enact legislation denying or limiting the so-called right referred to in the California constitutional provision, and such legislation would become effective on approval thereof by the electors of Akron.

Under Section 7 of Article XVIII of the Ohio Constitution, a municipality is specifically authorized to "frame and adopt or amend a charter for its government and" to "exercise thereunder all powers of local self-government."

*Opinion of the Supreme Court of Ohio*

It may reasonably be argued that the equal-protection clause of the Fourteenth Amendment to the Constitution of the United States would prevent Akron by its charter from exercising thereunder powers of local self-government so as to require prior voter approval only with respect to the kind of ordinances described in Section 137 of its charter.

In our opinion, that constitutional provision would not prevent such a charter requirement, if we can reasonably conclude that ordinances of the kind described in Section 137 of the Akron Charter may reasonably require such a different treatment than other ordinances. In other words, the question is whether the classification of such ordinances, so as to require voter approval thereof instead of enabling them to become effective as do other ordinances, represents a reasonable classification. In our opinion, it does. Thus, as stated in the majority opinion in *Porter v. Oberlin*, *supra* (1 Ohio St. 2d 143), at 152:

"Certainly, a legislative body is not unreasonable because it elects to proceed slowly in such an emotionally involved field as race relations." See also *Chicago Real Estate Board v. Chicago* (1967), 36 Ill. 2d 530, 224 N.E. 2d 793.

*Opinion of the Supreme Court of Ohio*

Likewise, since all the legislative power of a municipality is inherent in its people (See Section 2, Article I and Article XVIII of the Ohio Constitution), they are not unreasonable because they elect to proceed slowly in that field.

Thus, our conclusion is that Section 137 of the Akron Charter does not conflict with Article XIV of the Amendments to the Constitution of the United States.

For the foregoing reasons, the judgment of the Court of Appeals is affirmed.

*Judgment affirmed.*

ZIMMERMAN, MATTHIAS, O'NEILL, HERBERT and BROWN,  
*JJ.*, concur.

SCHNEIDER, J., concurs in the judgment on the basis of Judge Guernsey's concurring opinion in *Porter v. Oberlin*, 1 Ohio St. 2d 143, at page 154.

**Notice of Appeal to the Supreme Court of the  
United States**

**IN THE  
SUPREME COURT OF THE STATE OF OHIO**

**No. 41003**

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**THE STATE OF OHIO, EX REL. NELLIE HUNTER, ON BEHALF  
OF THE CITY OF AKRON, OHIO,**  
**Appellant,**

**v.**

**EDWARD O. ERICKSON, MAYOR OF THE CITY OF AKRON, RAY C.  
SHEPPARD, CITY DIRECTOR OF LAW, and KENNETH KOLLER,  
WILLIAM S. PARRY, MARTHA BIRNBAUM, ROBERT C. WIL-  
SON and CLIFFORD E. GATES, Constituting the Members  
of the Commission on Equal Opportunity in Housing,**  
**Appellees.**

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I. Notice is hereby given that the State of Ohio, Ex Rel. Nellie Hunter, appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Ohio in this action entered on December 27, 1967.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

*Notice of Appeal to the Supreme Court of the  
United States*

1. The Record on Appeal to the Supreme Court of Ohio in this case which includes:

Petition

Ordinance No. 873-1964—Exhibit A

Ordinance No. 926-1964—Exhibit B

Alternative Writ of Mandamus

Answer

Reply

Stipulation

Opinion

Journal Entry

Notice of Appeal

2. The decision of the Supreme Court of the State of Ohio entered on December 27, 1967 (12 Ohio St. 2d 116).

3. The Notice of Appeal to the Supreme Court of the United States and proof of service.

III. The following questions are presented by this appeal:

1. Does a city charter amendment which nullifies a pre-existing city fair housing ordinance guaranteeing the right to secure housing free from discrimination based upon race, color or creed until it is approved by a majority of the city's electors voting at a regular or special election deprive a Negro citizen attempting to assert her rights under the fair housing ordinance of due process of law and equal protection of law guaranteed by the FOURTEENTH AMENDMENT to the United States Constitution?

2. Does a city charter amendment which subjects only fair housing legislation to approval by the city's electors

*Notice of Appeal to the Supreme Court of the  
United States*

voting at a regular or special election, but does not subject any other type of city legislation to this procedure violate the rights of Negro citizens to equal protection of law guaranteed by the **FOURTEENTH AMENDMENT** to the United States Constitution?

3. May a city, by charter amendment, consistent with the prohibitions against invidious racial classifications contained in the **FOURTEENTH AMENDMENT** to the United States Constitution only limit the police power of its legislative body in the area of protecting citizens against racial discrimination and only nullify all pre-existing ordinances prohibiting discrimination until voter approval is obtained?

**NORMAN PURNELL**

603 First National Tower  
Akron, Ohio 44308

**BERNARD B. ROETZEL**

902 First National Tower  
Akron, Ohio 44308

**ROBERT L. CARTER**

**LEWIS M. STEEL**

1790 Broadway  
New York, New York 10019

Attorneys for Appellant

By **ROBERT L. CARTER**

**Order****SUPREME COURT OF THE UNITED STATES**

No. , OCTOBER TERM, 1967

STATE, EX REL. NELLIE HUNTER, etc.,

Appellant,

EDWARD O. ERICKSON, MAYOR of the City of AKRON, etc.

UPON CONSIDERATION of the application of counsel for appellant,

IT IS ORDERED that the time for filing an appeal in the above-entitled case under Rule 13 be, and the same is hereby, extended to and including April 25, 1968.

/s/ POTTER STEWART  
Associate Justice of the Supreme  
Court of the United States

Dated this 18th day of March, 1968.

**Probable Jurisdiction Noted—June 3, 1968**

**IN THE  
SUPREME COURT OF THE UNITED STATES**

**No. 1359, October Term, 1967**

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**STATE OF OHIO, ex rel. NELLIE HUNTER,**

**Appellant,**

***against***

**EDWARD O. ERICKSON, etc., et al.,**

**Appellees.**

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**In this case probable jurisdiction is noted and the case  
is placed on the summary calendar.**